Supreme Court, U. S.
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JUL 14 1972
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff,

and

STATE OF CONNECTICUT,

Intervenor-Plaintiff,

vs.

STATE OF NEW YORK, ET AL,

Defendants.

PETITION FOR RE-HEARING

ROBERT L. SHEVIN
ATTORNEY GENERAL OF FLORIDA

Winifred L. Wentworth
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Tallahassee, Florida 32304

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The Defendant State of Florida presents this Petition for Re-Hearing of the above titled cause and respectfully shows:

GROUNDS FOR RE-HEARING

I

In its opinion in this cause the Court entered the decree recommended by the Special Master as to the disposition of unclaimed Western Union money order funds which several states sought to escheat, in affirmation of the allocation formula adopted in Texas v. New Jersey, 379 U.S. 674 (1965). The funds accordingly escheat to the state of the creditor's address as appearing in Western Union records. If no address appears in such records, then the right to escheat would belong to the domiciliary state of the debtor, Western Union. Pennsylvania v. New York, _____ U.S. _____, No. 40 Orig. at 7, (June 19, 1972).

For the purposes of this petition, the Defendant State of Florida accepts the Court's confirmation of the Special Master's conclusion that the funds in question may be escheated by the state "in which the records of Western Union placed the address of the creditor." Id. at 7; Report of the Special Master at 20-21. Petitioner also accepts the determination that the money order application forms constitute records from which these addresses may be obtained. Pennsylvania v. New York, supra, at 9.

Petitioner urges, however, that in every instance in which such records reflect an applicant's failure to supply an address different from that of the issuing office, then the address of the Western Union office at which the creditor would be entitled to a refund or payment constitutes an "adequate" record of the creditor's address for purposes of this proceeding. The Court recognized that a residence address is not always available and recommended that in the future the states require Western Union to keep adequate address records. Id. at 9. The petitioner urges, however, that the failure to record the residence addresses of creditors was not due to the fact that Western Union did not attempt to obtain this information. The money order application forms presently require the creditor's address to be listed. Stipulation of Facts, p. 5-6, Para. II, subpara. 7. It is clear from the face of such forms, Exhibit 2 of the stipulated record, that in every instance the failure to obtain records of other creditor addresses results from an omission by the purchaser to complete the last line designated "sender's address." State legislation requiring Western Union to keep "adequate records" would therefore appear to be an impractical or impossible remedy for this problem.

For this reason, petitioner urges that a state's right to escheat should not be conditioned upon the existence of creditors' residence addresses in the debtor's records. Instead it is suggested that the record of the place of refund or payment, which is always obtainable from

Western Union's records, should in the absence of conflicting records constitute the business address of the creditor for the purpose of determining which state shall have the right of escheat. This conclusion would accord with the expressed intent of the Court in Texas, supra, quoted repeatedly in the briefs in this cause, that the rule based on a debtor's record of a creditor's address was not meant to incorporate legal residence or domicile concepts. 379 U.S. 674, 601, Note 11.

II

The Court's present policy of allowing the funds in controversy from unclaimed money orders to escheat to the debtor domiciliary state results in the inequity of proceeds from many separate small transactions flowing to the state where a debtor has chosen to incorporate, in conflict with the principle by which a debt is treated as property of the creditor and not the debtor. This procedure was expressly rejected by the Court in Texas v. New Jersey, supra, as a means of disposing of such unclaimed funds. The Court stated that:

> [I]t seems to us that in deciding a question which should be determined primarily on the principles of fairness, it would too greatly exalt a minor factor to permit escheat of obligations incurred all over the country by the state in which the debtor happened to incorporate itself. Id. at 680.

If all of the unclaimed funds from those money order forms which do not list the residence address of the creditor are escheated to the debtor domiciliary state, the standard which was rejected by the Court in Texas v. New Jersey, supra, may in effect be applied in the case sub judice. Unlike the Texas case, where only small portions of the obligations had no creditor's address on the debtor's records, in this case the greater share will apparently continue in the future to go to the domiciliary state since, as argued in Point I, supra, state legislation cannot as a practical matter prevent the sender from failing to list his residence address. By looking to the address of the creditor the Court in Texas recognized that the debts were assets of creditors and attempted to distribute them proportionately to the number of creditors in each state. Id. at 681. The equitable principles of this policy will be defeated by allowing the debtor domiciliary state to escheat all funds for which there is no address declared by the creditor, other than the location at which he is entitled to refund or payment.

Considering the address of those creditors who did not list a residence address on the money order form to be the state in which the Western Union office for refund or payment is located

will more equitably allocate the funds. This distribution would be accurate as well as equitable. In fact, if the Court has considered the evidence proffered to the Special Master concerning Western Union's 1963 transactions (Report of the Special Master, p. 5-6), this material will show that less than two percent of the money order purchase forms list an address in a state different from the state in which the transactions occurred. It is urged, therefore, that the address of the Western Union office in which the creditor purchased his money order, and at which refund is payable, be considered in the business address of the creditor when no other address is listed on the purchase form.

CONCLUSION

The State of Florida accepts the Court's decision to allow unclaimed funds to escheat to the state which is shown in Western Union's records as the address of the creditor. For the reasons stated herein, however, it is urged that when no other address is shown by such records, the address of the office where the funds are refundable constitutes the address of the creditor as shown by the

debtor's records. This disposition would fully accord with the reasoning and result of Texas v. New Jersey, supra.

Respectfully submitted,

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State of Florida

PROOF OF SERVICE

I, Winifred L. Wentworth, Assistant Attorney General of the State of Florida, hereby certify that I am one of the attorneys for the defendants, State of Florida, that I am a member of the Bar of the Supreme Court of the United States, and that on the 13th day of July, 1972, I served copies of the foregoing Petition for Re-Hearing on each of the parties by depositing such copies in a United States Post Office, addressed as follows:

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DEC 27 1972

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Defendants,

and the

STATE OF ARIZONA,

Intervening Defendant.

SUPPLEMENTAL REPORT OF JOHN F. DAVIS, SPECIAL MASTER

December, 1972

Washington, D.C. • THIEL PRESS • (202) 393-0625

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SUPPLEMENTAL REPORT OF JOHN F. DAVIS, SPECIAL MASTER

To the Chief Justice and the Associate Justices of the Supreme Court of the United States:

On June 19, 1972, the Supreme Court handed down an opinion in this case adopting a formula for determining which States are entitled to escheat unclaimed funds in the possession of Western Union Telegraph Company as the result of aborted telegraphic money orders. In the concluding paragraph of that opinion it was stated: "We think that as a matter of fairness the claimant States, and not Western Union, should bear the cost of finding and recording the available addresses, and we shall remand to the Special Master for a hearing and recommendation as to the appropriate formula for distributing those costs. * * *"

On June 27, 1972, the Special Master notified counsel for all of the parties that he would hold a hearing for the submission of evidence and oral argument on the subject of the remand if any party so desired. In the absence of such a request, he would consider the views of the parties on written submission, memoranda to be filed on or before August 1 with replies to be filed on or before August 15. Before this procedure could be carried out Florida and Pennslyvania filed petitions for rehearing with the Court. Thereupon, the Special Master informed the parties that he was of the opinion that it would be inappropriate to proceed while the petitions were pending. On October 10, 1972, the Supreme Court denied the petitions for rehearing. On October 12 the Special Master rescheduled the dates for memoranda and replies for November 15 and December 1, 1972.

No party has requested a formal hearing. Western Union, Indiana, New York, Oregon and Pennsylvania have filed memoranda.

The parties who have communicated their views to the Special Master agree that the search of the records should

be conducted by Western Union and that the resulting tabulation[1] should list not only the items as to which there are no addresses or in which the addresses place the creditors in the States which are parties to this proceeding, but should also list items showing addresses in all of the States. Since such a tabulation would provide a basis for the recovery by escheat, or custodial taking, by States not parties to this proceeding, the question is whether such States should share in the cost of the search. All of the parties who have been heard from agree that any State benefited by the search should share proportionally in its cost. It has also been proposed that the costs of these proceedings should also be so apportioned. The Special Master agrees that it is equitable that all States sharing in the benefits of the search should pay their share of the cost, but it does not seem appropriate that court costs in a proceeding should be assessed against States which are not parties. The Special Master therefore recommends a supplemental decree providing for a division of the cost of the search proportionate to the amounts of their recovery from the fund by all States, but that the costs of these proceedings, including the costs heretofore allowed and any costs hereafter allowed for the remand, should be

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[1] Western Union has suggested that a material saving can be effected by not attempting to search out addresses for items of $3.00 or less, but by merely totalling them and dividing the total in the same proportion as the larger items are divided. The parties generally agree on this procedure, but New York questions the use of $3.00 as the cut-off figure. This seems to be a detail of the audit on which the Court should not be called to make a decision. If the parties can agree on such a procedure, the Special Master does not believe the proposed supplemental decree would prevent its being used.

divided pro rata only among the States which are parties to the case.

The Commonwealth of Pennsylvania has suggested that the search include not only the period covered by its complaint, that is through December 31, 1962, but also through December 31, 1965, since the use of that date would permit accounting for all full calendar years completed seven years before the audit. The Special Master does not believe that the Court should make an order covering periods not specified in the pleadings. However, if Pennsylvania should ask leave to amend its complaint to cover the additional three years, and if the other parties to the proceeding express no objection to such an amendment, the Special Master recommends that the Court accept the amendment and that its order then be deemed to cover the entire period.

In addition to the above matters, Western Union has made suggestions as to the methods it would use in making the search and as to its application of the Court's opinion to various factual situations. The States have disagreed as to some of these details, such, for example, as to whether a street address of a sender without identification of a city or State can be accepted without verification as fixing the sender's address in the State where the money order originated. The Special Master does not believe that it is appropriate for the Court to resolve this and other questions of interpretation in advance of the search. Hopefully, it will never be called on to do so since such questions can be resolved by agreement between the parties, or by submission of such details to an independent referee or arbitrator, or, if necessary, by the decision of the state courts in regular escheat proceedings. If irreconcilable conflicts do

develop, it will then be the appropriate time to ask the Court to decide such questions.[2]

CONCLUSION

The Special Master recommends the entry of the following supplemental decree:

RECOMMENDED SUPPLEMENTAL DECREE

Supplementing the Court's decree of June 29, 1972, it is further Ordered, Adjudged and Decreed as follows:

The reasonable cost of a search by Western Union of its records for the addresses of creditors in connection with aborted telegraphic money orders shall be deducted from the unclaimed fund in Western Union's possession and the amount payable to any State as a result of escheat or custodial taking of any part of the fund shall be reduced by a percentage of such cost equal to the percentage that that State's share of the fund bears to the total of the fund. As to the States who are parties to this proceeding, the amount of the fund which each may recover by escheat or custodial taking shall be further reduced by a share of the costs of this proceeding, including both the costs approved by the Court's order of June 26, 1972, and any costs for this supplemental

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[2]Pennsylvania appears to assume that this proceeding will be continued to a final order by this Court apportioning the fund among the States. The Special Master does not believe that this original action should be utilized as a substitute for the regular escheat procedures under the individual State statutes. Rather it should be treated as a declaratory judgment action to reconcile the conflicting claims of the various States leaving the claims to the established escheat procedures from there on.

proceeding hereafter approved by the Court, proportionate to the total amount of the recovery of those States from the fund.

Respectfully submitted,

JOHN F. DAVIS
Special Master

December, 1972